

DOCKET FILE COPY ORIGINAL
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL

RECEIVED

In the Matter of)

)
Amendment of Parts 1, 21, 73, 74 and 101 of
the Commission's Rules to Facilitate the
Provision of Fixed and Mobile Broadband
Access, Educational and Other Advanced
Services in the 2150-2162 and 2500-2690 MHz
Bands)

WT Docket No. 03-66 AUG 28 2006

RM-10586

Federal Communications Commission
Office of Secretary

)
Part 1 of the Commission's Rules - Further
Competitive Bidding Procedures)

WT Docket No. 03-67

)
Amendment of Parts 21 and 74 to Enable
Multipoint Distribution Service and the
Instructional Television Fixed Service)
Amendment of Parts 21 and 74 to Engage in
Fixed Two-Way Transmissions)

MM Docket No. 97-217

)
Amendment of Parts 21 and 74
of the Commission's Rules With Regard to
Licensing in the Multipoint
Distribution Service and in the
Instructional Television Fixed Service for the
Gulf of Mexico)

WT Docket No. 02-68

RM-9718

To: The Secretary
The Commission

REPLY

NY3G Partnership ("NY3G"), by its attorneys, hereby files this Reply in the above-captioned rulemaking proceeding.¹ In its Petition for Reconsideration, NY3G urged the Commission to fairly apportion co-channel frequencies between grandfathered EBS licensees

¹ See *In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, FCC 06-46 (2006) ("Order").

20060828 0414
List A B C D E

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of)	WT Docket No. 03-66
the Commission's Rules to Facilitate the)	RM-10586
Provision of Fixed and Mobile Broadband)	
Access, Educational and Other Advanced)	
Services in the 2150-2162 and 2500-2690 MHz)	
Bands)	
)	
Part 1 of the Commission's Rules - Further)	WT Docket No. 03-67
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service and the)	
Instructional Television Fixed Service)	
Amendment of Parts 21 and 74 to Engage in)	
Fixed Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74)	WT Docket No. 02-68
of the Commission's Rules With Regard to)	RM-9718
Licensing in the Multipoint)	
Distribution Service and in the)	
Instructional Television Fixed Service for the)	
Gulf of Mexico)	

To: The Secretary
 The Commission

REPLY

NY3G Partnership ("NY3G"), by its attorneys, hereby files this Reply in the above-captioned rulemaking proceeding.¹ In its Petition for Reconsideration, NY3G urged the Commission to fairly apportion co-channel frequencies between grandfathered EBS licensees

¹ See *In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, FCC 06-46 (2006) ("*Order*").

and co-channel BRS licensees, rather than adopt a “split-the-football” approach, as a default in the event that the licensees are unable, during the 90-day mandatory negotiation period, to reach a mutual agreement regarding co-channel operations. *See* 47 C.F.R. § 27.1216; *Order*, at ¶ 350.

Several pleadings filed on reconsideration support NY3G’s Petition and also demonstrate that, contrary to the Commission’s conclusion in the *Order*, it is reasonable to expect that the split-the-football approach will lead to problems in more cases than just that of NY3G.² Line of Site, Inc. states “[a]s correctly noted by NY3G, the splitting of significant overlaps geographically will in many cases result in divided or fractional service to . . . key population centers[,] with commercial licensees thereby being excluded from certain geographic areas on valuable commercial channels.”³ NextWave Broadband, Inc. demonstrates that a default rule that splits the frequencies based on the population of co-channel licensees better “serves the public interest by avoiding the random partitioning of the geographic service area by the Commission under the presently adopted approach.”⁴ The Wireless Communications

² *See Order*, at ¶ 353 (“No other party . . . has suggested that the splitting the football methodology adopted by the Commission cannot work.”); *see, e.g.,* Line of Site, Inc., Consolidated Opposition to Petitions for Further Reconsideration, at 4 (August 11, 2006); NextWave Broadband, Inc., Petition for Reconsideration, at 12-14 (July 19, 2006). The new facts presented in these pleadings also provide good cause for reconsideration under 47 C.F.R. § 1.429(b).

³ Line of Site, Inc., Consolidated Opposition to Petitions for Further Reconsideration, at 4 (August 11, 2006).

⁴ *See* NextWave Broadband, Inc., Petition for Reconsideration, at 12-14 (July 19, 2006). While NY3G agrees with NextWave that the split-the-football approach, as a default rule, is contrary to the public interest, NY3G does not support NextWave’s proposal to grant EBS licensees a right of first refusal to access the high-powered channel. Instead, the high-powered channel should be automatically assigned to EBS licensees, consistent with the Commission’s goal in creating that band. *See In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order, 19 FCC Rcd

Association International, Inc., while not directly supporting NY3G's proposal, effectively concedes that a split-the-football approach in markets where co-channel licensees have significant geographic overlaps will result in large exclusion zones where service cannot be provided.⁵ Indeed, another party, Sprint Nextel, also identified the same interference issues in the proceeding below.⁶ By contrast, only two parties filed oppositions to NY3G's proposal on reconsideration.⁷

NY3G is now in the process of negotiating with the co-channel licensee in New York City, as required by the Commission's rules. While NY3G hopes to reach an amicable agreement, such a result is far from certain.⁸ To avoid application of the split-the-football approach, which will render the entire F-group spectrum essentially unusable to millions of consumers in the heart of New York City, NY3G urges the Commission to adopt a default rule

14165, at ¶ 39 (2004) (“[T]he plan reserves some spectrum for high-powered use for both EBS and rural licensee who have a continued need to deploy high-power systems.”).

⁵ See WCAI, Petition for Partial Reconsideration, at 18 (July 19, 2006) (“There are a limited number of situations (particularly among EBS stations that tended to be more closely-spaced than BRS stations) where the GSAs are so highly truncated that a licensee cannot be reasonably expected to comply with the restrictions on signal level at the GSA boundary [and] the height benchmarking rule . . .”).

⁶ Although urging the application of split-the-football to resolve mutual exclusivity issues between co-channel licensees, Sprint Nextel conceded that changes to the FCC's proposed technical operating rules were necessary in order to address potential co-channel interference concerns associated with height benchmarking of base stations and the deployment of CPEs. See, e.g., Letter to Marlene Dortch from Lawrence Krevor (December 5, 2005).

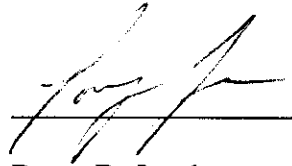
⁷ See School Board of Miami-Dade County, Florida, Consolidated Opposition to Petitions for Reconsideration (August 11, 2006); Catholic Television Network and National ITFS Association, Opposition to Petitions for Reconsideration (August 18, 2006).

⁸ NY3G reserves the right to amend or supplement its pleadings in this proceeding upon conclusion of the negotiations.

that assigns the EBS licensee the high-powered channel and one low-powered channel and the BRS licensee two adjacent low-powered channels.

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read 'Bruce D. Jacobs', written over a horizontal line.

Bruce D. Jacobs

Tony Lin

Pillsbury Winthrop Shaw Pittman LLP

2300 N St. NW

Washington, DC 20037-1128

Counsel for NY3G Partnership

Dated: August 28, 2006

CERTIFICATE OF SERVICE

I, Sylvia Davis, hereby certify that a copy of this Reply was sent by first-class mail, postage prepaid on August 28, 2006 to the following:

Paul J. Sinderbrand
Robert D. Primosch
Nguyen T. Vu
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037

Joseph A. Belisle
Leibowitz & Associates, PA
One SE 3rd Avenue, Suite 1450
Miami, FL 33131

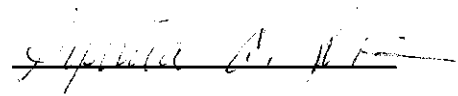
Edwin N. Lavergne
Fish & Richardson P.C.
1425 K Street, NW, Suite 1100
Washington, DC 20005

George Alex
NextWave Broadband Inc.
75 Holly Hill Road, Suite 200
Greenwich, CT 06830

Lawrence R. Krevor
Trey Hanbury
Nicole McGinnis
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 2191

Evan D. Carb
RJGLaw LLC
1010 Wayne Avenue, Suite 950
Silver Spring, MD 20910

Todd D. Gray
Dow Lohnes PLLC
1200 New Hampshire, NW, Suite 800
Washington, DC 20036



Sylvia Davis